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October 1, 2003

The Honorable Allan W. Klein
Administrative Law Judge
Office of Administrative Hearings
100 Washington Square, Suite 1700
Minneapolis, MN 55401-2138

Re: Amendment to Environmental Quality Board Rules, parts 4410.7010 – 7070
OAH Docket No. 6-2901 – 15394-1

Dear Judge Klein:

The Minnesota Transmission Owners[1] ("MTO") offer the following reply comments.

With the exception of the addition of subparagraph "F" to rule 4410.7030, subp. 1, the MTO supports the additions to the proposed rule in Staff's September 24, 2003 Comments ("September 24 Comments"). With respect to subparagraph F, we respectfully object to the provision as duplicative and request that it not be recommended for approval.

In its September 24 Comments, Staff proposes to add the following subparagraph to rule 4410.7030.

> F. <u>those persons who own property adjacent to any site or within any route identified by the applicant as a preferred location for the project or as a site or route under serious consideration by the applicant if such sites or routes are known to the applicant</u>.

Staff has agreed to add the above language at the suggestion of the Sierra Club. While Staff recognizes that the new language does not obligate the applicant to identify the "preferred" route or site, the Staff nonetheless "does not oppose giving notice to landowners near the proposed site or route." September 24 Comments, at 4.

[1] The Minnesota Transmission Owners consists of the following electric utilities: Dairyland Power Cooperative, East River Electric Cooperative, Great River Energy, Hutchinson Municipal Utilities, Interstate Power & Light, Minnesota Power, L&O Power Cooperative, Minnkota Power Cooperative, Missouri River Energy Services, Otter Tail Power Company, Southern Minnesota Municipal Power Agency, Willmar Municipal Utilities, and Northern States Power Company, d/b/a Xcel Energy. Collectively, these utilities own and operate more than six thousand five hundred miles of transmission lines in the state, representing an investment of more than three-quarters of a billion dollars.

While we appreciate Staff's willingness to provide the proposed notice, we fail to see how this proposal captures any persons that will not already be noticed under Rule 4410.7030, subpart (D). That subpart requires notice on all persons "who are required to be given notice of the certificate of need application or the transmission projects report under the rules of the Public Utilities Commission."[2]

Under the rules governing the transmission projects report – Chapter 7848 – applicants seeking certification of high voltage transmission lines are required to provide notice according to Minnesota Rule 7848.1900. That rule, at subpart 3, requires utilities to develop notice plans that must include notice to the following persons, among others, by the method specified:

(1) direct mail notice, based on county tax assessment rolls, to landowners reasonably likely to be affected by the proposed transmission line; and

(2) direct mail notice to persons in possession of or residing on any property reasonably likely to be affected by the proposed transmission line.

(Emphasis added).

The Minnesota Public Utilities Commission is currently beginning a rulemaking in which it is seeking to incorporate into its certificate of need rules, essentially verbatim, the notice language contained in 7848.1900.

Based on the above, we respectfully question whether subparagraph F adds anything of substance. In other words, under what circumstances is the Sierra Club concerned that persons who live "adjacent to" or "within any route" which is "preferred" or "under serious consideration," will not be required to be noticed under subparagraph D? Can it reasonably be argued that persons located "adjacent" a site or "within" a route will not also be a person who is "reasonably likely to be affected" by a proposed project? In short, subparagraph F is duplicative of subparagraph D.

Because it is duplicative, the provision lacks substantive value. In contrast, subparagraph F will likely only create the potential for confusion and delay. As Staff itself notes, identifying those projects that are under "serious consideration" is highly subjective. The concept of providing notice of projects "under serious consideration" was discussed at length in the Commission's Chapter 7848 rulemaking.[3] The Commisison, however, rejected that concept in

[2] The above quoted language is also new language proposed by Staff in its September 24 Comments. The MTO has no objection to this addition.

[3] In fact, early versions of Chapter 7848 included a requirement that utilities provide notice to persons within

favor of the current version of Minnesota Rule 7848.1900 (and the soon to be adopted rule governing notice in certificate of need applications). It was rejected in large part for the reason identified by Staff – it was too subjective. Because of its subjectivity, applicants were rightly concerned that proceedings could become unnecessarily bogged down by allegations that applications failed to disclose routes "under serious consideration" at the time the application was filed. In addition, confusion is only likely to reign over what constitutes "adjacent" to a particular site? Does the person's property boundary have to abut the site, be within 100 yards, ¼ mile, etc.? Being adjacent to a particular site will likely be different in different situations. Which is why utilities – and the Commission adopted – a process whereby utilities would propose notice plans tailored to the specific circumstances, for notice on all those reasonably likely to be affected.

The addition of subparagraph F is duplicative and adds no substantive value to the rules. The rule is likely to confuse, not clarify, who should be provided notice of a pending project. Accordingly, we submit the provision lacks rationality and respectfully request the Administrative Law Judge not recommend its approval.

Should the ALJ recommend its approval and/or the EQB continue to believe in its necessity, the MTO requests that the EQB consider the addition of the following provision:

> G. Good faith sufficient. The environmental report shall not be delayed or denied on grounds of defective notice if the applicant acted in good faith and in substantial compliance with the Minnesota Public Utilities Commission's rules for notice in certificate of need applications or transmission projects report.

This provision – which is similar to Minnesota Rule, part 7848.1900, subp. 7 recently adopted by the Commission – will act to protect the sanctity of the environmental report against undue complaints of inadequate notice where utilities act in good faith.

Thank you for your consideration.

Very truly yours,

LINDQUIST & VENNUM P.L.L.P.

Todd J. Guerrero

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corridors "under serious considerations."